

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEREMY PUTNAM BAKKE,

Plaintiff,

v.

CLARK COUNTY JAIL et al.,

Defendants.

CASE NO. 3:15-CV-05713-BHS-DWC

ORDER TO SHOW CAUSE OR
AMEND

Plaintiff Jeremy Putnam Bakke, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. § 1915A, the Court declines to serve Plaintiff's Complaint but provides Plaintiff leave to file an amended pleading by November 15, 2015, to cure the deficiencies identified herein.

BACKGROUND

Plaintiff, who is currently incarcerated at Stafford Creek Corrections Center alleges while he was a pre-trial detainee at Clark County Jail, there was black mold in the showers and sleeping areas of the Clark County Jail. Dkt. 5 at 3. Plaintiff alleges the jail administrators knew about the black mold and did not attempt to fix the problem. *Id.* at 5.

1 Plaintiff also alleges the Clark County Jail is overcrowded and 8-10 inmates in the dorms
 2 were required to sleep on the floor. *Id.* at 5. Plaintiff also alleges each cell houses three inmates
 3 when they are designed to hold only one inmate. *Id.* at 3. Plaintiff alleges the dorms have over 30
 4 inmates when the dorm is designed to hold 10 inmates. *Id.* Plaintiff alleges the dorms have 1
 5 shower, 1 sink, and one toilet and this is “unsanitary and promotes the spread of disease.” *Id.*
 6 Plaintiff also alleges “[p]eople have to sleep on the floor with a mat and sheet the floor is [very
 7 dirty] and [very very] unsanitary to sleep on.” Dkt. 5 at 5. Plaintiff alleges Defendant Bishop, the
 8 Chief Jail Deputy, knew about the overcrowding issue. *Id.* at 5.

9 Plaintiff seeks monetary damages. Dkt. 5 at 4.

10 DISCUSSION

11 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
 12 complaints brought by prisoners seeking relief against a governmental entity or officer or
 13 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
 14 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
 15 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
 16 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
 17 152 F.3d 1193 (9th Cir. 1998).

18 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
 19 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
 20 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
 21 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
 22 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
 23 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
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1 named defendants caused, or personally participated in causing, the harm alleged in the
2 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

3 Where, as here, exhibits are attached to a complaint, the exhibits are deemed part of the
4 complaint for all purposes, including for purposes of determining the sufficiency of the plaintiff's
5 claims. *See Fed.R.Civ.P. 10(c)*; 5A Wright & Miller, *Federal Practice and Procedure: Civil 3d* §
6 1327, at 443-44 (2002). Moreover, if an exhibit attached to a complaint contradicts an assertion
7 in the complaint and reveals information that prohibits recovery as a matter of law, the
8 information provided in the exhibit trumps the allegation in the complaint. *Wilson v. Fitter*, 2009
9 WL 6908049, at *2 (C.D. Cal. Nov. 5, 2009) *report and recommendation adopted*, 2010 WL
10 3893992 (C.D. Cal. Sept. 30, 2010) (citing *Riggins v. Walter*, 279 F.3d 422, 425-26 (7th Cir.
11 1995) (affirming dismissal of prisoner's § 1983 claims where information in attached exhibit
12 contradicted allegation of complaint); *Hudson v. Phillipson*, 2008 WL 356884, *3 (W.D.Mich.
13 Feb.7, 2008) (dismissing prisoner's § 1983 claims where information in attached exhibits
14 conflicted with allegations of complaint)).

15 Plaintiff's Complaint suffers from deficiencies requiring dismissal if not corrected in an
16 amended complaint.

17 **A. Conditions of Confinement**

18 Plaintiff alleges, while housed at Clark County Jail, he has been subjected to conditions
19 of confinement which violate his constitutional rights. *See* Dkt. 5 at 3. Specifically, Plaintiff
20 maintains the jail was overcrowded and there was black mold in the showers and sleeping areas.
21 *Id.*

22 The Due Process Clause of the Fourteenth Amendment protects pretrial detainees by
23 prohibiting the State from punishing them. *See Bell v. Wolfish*, 441 U.S. 520, 535 n. 16 (1979).

1 The Ninth Circuit protects a pretrial detainee's claims using the same analysis it would use with
2 a prisoner's claim brought pursuant to the Eighth Amendment.

3 We have long analyzed claims that correction facility officials violated pretrial
4 detainees' constitutional rights by failing to address their medical needs
(including suicide prevention) under a "deliberate indifference" standard. *See,*
5 *e.g., Lolli v. County of Orange*, 351 F.3d 410, 418-19 (9th Cir. 2003) (applying
the "deliberate indifference" standard to a diabetic pretrial detainee's claims of
failure to provide care for serious medical needs).

6 *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1241 (9th Cir. 2010)(emphasis added).

7 The Eighth Amendment's prohibition of cruel and unusual punishment imposes duties on
8 prison officials to provide prisoners with the basic necessities of life such as food, clothing,
9 shelter, sanitation, medical care and personal safety. *See Farmer v. Brennan*, 511 U.S. 825, 832
10 (1994); *Helling v. McKinney*, 509 U.S. 25, 31 (1993).

11 To state a claim for unconstitutional conditions of confinement, a plaintiff must allege
12 that a defendant's acts or omissions have deprived the inmate of "the minimal civilized measure
13 of life's necessities" and that the defendant acted with deliberate indifference to an excessive risk
14 to inmate health or safety. *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994) (quoting *Farmer*,
15 511 U.S. at 834); *see Estate of Ford v. Ramirez—Palmer*, 301 F.3d 1043, 1049–50 (9th Cir.
16 .2002). "The circumstances, nature, and duration of a deprivation of [] necessities must be
17 considered in determining whether a constitutional violation has occurred." *Johnson v. Lewis*,
18 217 F.3d 726, 731 (9th Cir. 2000), *cert. denied*, 532 U.S. 1065 (2001). Usually, a more
19 offensive condition will be of constitutional significance when it exists for even a short time,
20 while a less offensive condition will be of constitutional significance only when it has existed for
21 a much longer time. Long-term unsanitary conditions violate the Eighth Amendment. *See, e.g.,*
22 *Hearns v. Terhune*, 413 F.3d 1036, 1041–42 (9th Cir. 2005) (allegations of serious health
23 hazards in disciplinary segregation yard for a period of nine months, including toilets that did not
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1 work, sinks that were rusted and stagnant pools of water infested with insects, and a lack of cold
2 water even though the temperature in the prison yard exceeded 100 degrees, enough to state a
3 claim of unconstitutional prison conditions).

4 **1. Objective Element**

5 Plaintiff's contentions do not establish a Fourteenth Amendment violation. Plaintiff
6 does not allege serious harm or a deprivation of "the minimal civilized measure of life's
7 necessities." *See Allen*, 48 F.3d at 1087.

8 a. Mold

9 Plaintiff fails to allege facts demonstrating he suffered an objective deprivation. The
10 Ninth Circuit has previously determined that "[u]nquestionably, subjection of a prisoner to lack
11 of sanitation that is severe or prolonged can constitute an infliction of pain within the meaning of
12 the Eighth Amendment." *Anderson v. Cnty. of Kern*, 45 F.3d 1310, 1314 *opinion amended on*
13 *denial of reh'g*, 75 F.3d 448 (9th Cir.1995) (holding an inmate must demonstrate that the sanitary
14 limitations imposed on him or her were more than temporary). According to Plaintiff, there was
15 black mold in the showers and sleeping areas. Dkt. 5 at 3, 5. However, Plaintiff fails to allege
16 how, if at all, the presence of black mold and unsanitary conditions have caused him harm or
17 how the deprivation was so severe as to constitute a deprivation of minimal life necessities.

18 b. Overcrowding

19 Plaintiff has also failed to allege he suffered an objective deprivation with respect to his
20 overcrowding claim. Allegations of overcrowding, alone, are insufficient to state a claim under
21 the Eighth Amendment. *See Rhodes v. Chapman*, 452 U.S. 337, 348 (1981); *Balla v. Idaho State*
22 *Bd. of Corr.*, 869 F.2d 461, 471 (9th Cir. 1989); *Akao v. Shimoda*, 832 F.2d 119, 120 (9th Cir.
23 1987) (per curiam) (citing *Hoptowit v. Ray*, 682 F.2d 132 1237, 1249 (9th Cir. 1982)). Where
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1 crowding causes an increase in violence or reduces the provision of other constitutionally
2 required services, or reaches a level where the institution is no longer fit for human habitation,
3 however, the prisoner may be able to state a claim. *See Balla*, 869 F.2d at 471; *Toussaint v.*
4 *Yockey*, 722 F.2d 1490, 1492 (9th Cir. 1984) (affirming that an Eighth Amendment violation
5 may occur as a result of overcrowded prison conditions causing increased violence, tension and
6 psychiatric problems); *Akao v. Shimoda*, 832 F.2d 119, 120 (9th Cir. 1987) (reversing district
7 court's dismissal of claim that overcrowding caused increased stress, tension and communicable
8 disease among inmate population).

9 Plaintiff generally alleges the jail is overcrowded and that about 8-10 inmates have to
10 sleep on the floor "most of the time." Dkt. 5 at 5. Plaintiff fails to allege any specific facts
11 showing how the overcrowding reached a level unfit for human habitation or how it resulted in
12 an unconstitutional condition. Pro se litigants have no authority to represent anyone other than
13 themselves. *See Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (non-attorney
14 plaintiff may not attempt to pursue claim on behalf of others in a representative capacity).
15 Plaintiff therefore cannot base his overcrowding claim on the overall effect the conditions of
16 confinement in the Clark County Jail have on other prisoners who have been confined at Clark
17 County Jail. Rather, plaintiff's factual allegations, if true, must be sufficient to show that the
18 conditions of confinement to which he allegedly is being subjected while confined at Clark
19 County Jail constitute cruel and unusual punishment as to him because they deprive him of
20 particular basic human needs. Plaintiff is not claiming that he is being denied food, clothing,
21 shelter, sanitation, medical care, or personal safety. Instead, plaintiff generally alleges there are
22 three inmates per cell, 30 inmates per dorm and 8-10 people have to sleep on the floor which is
23 unsanitary. Dkt. 5 at 5.

1 **2. Subjective Element**

2 Plaintiff does not allege Defendants were deliberately indifferent to the sanitation
3 conditions in the showers and sleeping areas or the overcrowding. Plaintiff alleges Defendants
4 failed to take any action to fix the mold problem. Dkt. 5 at 5. However, documents attached to
5 his Complaint show Defendants repeatedly responded to Plaintiff's complaints of mold and
6 overcrowding and investigated both issues. *Id.* at 6-7, 9 (Defendants Huff and Addie responded
7 to these grievances that a work order related to the mold had been submitted and the jail
8 administration was in the process of changing the classification system to "reduce the population
9 in the tanks."); *Id.* at 7 ("CMDR Belt" responded deputies had inspected the showers and
10 sleeping areas and there was no visible black mold. Another jail official (signature is not legible)
11 responded that another inspection was scheduled and if any mold was present, a work order
12 would be submitted); *Id.* at 20 (The handwriting is not clear but it appears Defendant Beltran
13 responded stating maintenance determined it was mildew, not mold, which could be cleaned.)

14 Thus, documents attached by Plaintiff show Defendants did not ignore Plaintiff's
15 grievances but instead, responded to his grievances and investigated the mold and overcrowding
16 issues on several occasions. *Wilson*, 2009 WL 6908049, at *2 (if an exhibit attached to a
17 complaint contradicts an assertion in the complaint and reveals information that prohibits
18 recovery as a matter of law, the information provided in the exhibit trumps the allegation in the
19 complaint); *Riggins*, 279 F.3d at 425-26 (affirming dismissal of prisoner's § 1983 claims where
20 information in attached exhibit contradicted allegation of complaint). Plaintiff has failed to allege
21 facts showing defendants acted with deliberate indifference and subjected Plaintiff to conditions
22 which rise to the level of cruel and unusual punishment.

1 Accordingly, Plaintiff fails to state a claim under the Fourteenth Amendment. Plaintiff is
2 granted leave to amend or show cause why this claim should not be dismissed.

3 **B. Clark County Jail as Defendant**

4 Plaintiff has named the Clark County Jail as a defendant. *See* Dkt. 5. 42 U.S.C. § 1983
5 applies to the actions of “persons” acting under color of state law. The language of § 1983 is
6 expansive and does not expressly incorporate common law immunities. *Owen v. City of*
7 *Independence, Mo.*, 445 U.S. 622, 637, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). Municipalities
8 are subject to suit under § 1983. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658,
9 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). However, “[i]n order to bring an appropriate action
10 challenging the actions, policies or customs of a local governmental unit, a plaintiff must name
11 the county or city itself as a party to the action, and not the particular municipal department or
12 facility where the alleged violation occurred. *See Nolan v. Snohomish County*, 59 Wash.App.
13 876, 883, 802 P.2d 792, 796 (1990).” *Bradford v. City of Seattle*, 557 F.Supp.2d 1189, 1207
14 (W.D.Wash.2008) (holding that the Seattle Police Department is not a legal entity capable of
15 being sued under § 1983).

16 **C. Instruction to Plaintiff and the Clerk**

17 Due to the deficiencies described above, the Court will not serve the Plaintiff’s
18 Complaint. If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
19 amended complaint and within the amended complaint, he must write a short, plain statement
20 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
21 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the
22 action or inaction of the individual is connected to the violation of Plaintiff’s constitutional
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1 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
2 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

3 Plaintiff shall present the amended complaint on the form provided by the Court. The
4 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
5 and not a copy, it should contain the same case number, and it may not incorporate any part of
6 the original complaint by reference. The amended complaint will act as a complete substitute for
7 the original Complaint, and not as a supplement. An amended complaint supersedes the original
8 complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on*
9 *other grounds, Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the amended
10 complaint must be complete in itself and all facts and causes of action alleged in the original
11 Complaint that are not alleged in the amended complaint are waived. *Forsyth*, 114 F.3d at 1474.
12 The Court will screen the amended complaint to determine whether it contains factual allegations
13 linking each Defendant to the alleged violations of Plaintiff's rights. The Court will not authorize
14 service of the amended complaint on any Defendant who is not specifically linked to a violation
15 of Plaintiff's rights.

16 If Plaintiff fails to file a amended complaint or fails to adequately address the issues
17 raised herein on or before November 15, 2015, the undersigned will recommend dismissal of this
18 action as frivolous pursuant to 28 U.S.C. § 1915.

19 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
20 civil rights complaint and for service. The Clerk is further directed to send copies of this Order
21 and Pro Se Instruction Sheet to Plaintiff.

1 Dated this 15th day of October, 2015.

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4 David W. Christel
5 United States Magistrate Judge
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